from the nature of the common design. *Regina* v. *Salmon*, 14 Cox C. C. 494; *Williams* v. *State*, 81 Ala. 1, 1 So. 179. But where either sudden impulse or preconceived purpose leads one of the number to perpetrate a crime not incidental to the common enterprise, he alone may be held therefor. *Rex* v. *Hawkins*, 3 C. & P. 392; *Rex* v. *Collison*, 4 C. & P. 565. And when, as in the principal case, a specific intent is an element of the crime, the instructions of the trial judge should require a finding that such intent existed in each defendant in order to establish his guilt. *Regina* v. *Bowen*, Car. & M. 149; *State* v. *Taylor*, 70 Vt. 1, 39 Atl. 447. Such requirements would not be satisfied in the principal case by proof that if the bullet had killed instead of wounding the gamekeeper the crime would have been murder, for malice aforethought may be inferred from a felonious course of action, without a positive intention to murder. *Regina* v. *Cruse*, 8 C. & P. 541. The specific intent necessary in the principal case is a positive intention to murder. The instructions given only require a realization that killing may probably ensue, which although sufficient to constitute malice aforethought is not intent to murder.

BAILMENTS — BAILOR AND BAILEE — CONVERSION BY BAILEE — DEVIATION FROM TERMS OF BAILMENT WITHOUT DAMAGE DURING DEVIATION. — The plaintiff, a liveryman, rented a horse and carriage to the defendant to drive from A. to B. The defendant in violation of the terms of the bailment drove beyond B. to C. After returning to B., the horse was killed without fault on the part of the defendant and not as a result of the deviation. *Held*, that the defendant is not liable in trover. *Daugherty* v. *Reveal*, 102 N. E. 381 (Ind. App. Ct.).

In general, to sustain an action for conversion, there must be an exercise of dominion over property inconsistent with, or in repudiation of, the true owner's rights. *Johnson* v. *Farr*, 60 N. H. 426. See *Spooner* v. *Holmes*, 102 Mass. 503. If this exercise of dominion be under an outright claim of ownership, it is of itself a conversion, even if made by mistake. *Hartford Ice Co.* v. *Greenwoods Co.*, 61 Conn. 166, 23 Atl. 91. But if it be the temporary use of another's property, special circumstances of the case should govern the decision. Where damage occurs during an intentional deviation, trover will lie. *Burnard* v. *Haggis*, 14 C. B. N. S. 45; *Perham* v. *Coney*, 117 Mass. 102. *Contra*, *Harvey* v. *Epes*, 12 Grat. 153. But if the deviation be unintentional, even if accompanied by damage, it would not be conversion. *Spooner* v. *Manchester*, 133 Mass. 270. Substantial damage, moreover, is often held an indispensable element in the plaintiff's cause. *Fouldes* v. *Willoughby*, 8 M. & W. 540; *Simmons* v. *Lillystone*, 8 Exch. 431. Thus have the courts taken a common-sense view of this subject, and accordingly it is submitted the principal case is correct in holding technical wrong unconnected with loss insufficient to impose full liability upon the defendant. This seems fairer than the old rule that mere deviation is conversion. *Wheelock* v. *Wheelwright*, 5 Mass. 104. And what modern authority there is, is in accord. *Farkas* v. *Powell*, 86 Ga. 800, 13 S. E. 200; *Doolittle* v. *Shaw*, 92 Ia. 348, 60 N. W. 621. See 8 HARV. L. REV. 280.

BANKRUPTCY — PARTNERSHIP CASES — POWER OF BANKRUPTCY COURT TO ADMINISTER NON-BANKRUPT PARTNER'S ESTATE. — The court of bankruptcy having adjudicated two partners and the bankrupt firm, the trustee petitions that as part of the administration of the firm bankruptcy, the court should be allowed to draw to itself for administration the estate of a third partner, not adjudicated. *Held*, that such order be made. *Francis* v. *McNeal*, 228 U. S. 695, 33 Sup. Ct. 701, affirming 186 Fed. 481 (C. C. A. 3d Cir.).

The Supreme Court settles this controverted point in accordance with the weight of authority of the lower federal courts. *In re Meyer*, 98 Fed. 976

(C. C. A. 2d Cir.); *In re Stokes*, 106 Fed. 312 (D. C.); *Dichas* v. *Barnes*, 140 Fed. 849 (C. C. A. 6th Cir.). *Contra, In re Bertenshaw*, 157 Fed. 363 (C. C. A. 8th Cir.). But it practically denies the expression of the entity theory of partnership in the Bankruptcy Act of 1898. That theory would lead to a contrary result, since the court of bankruptcy would have no right to administer any property which does not belong to the bankrupt. *In re Bertenshaw*, 157 Fed. 363 (C. C. A. 8th Cir.). See 18 HARV. L. REV. 495; 20 HARV. L. REV. 589, 594; 19 HARV. L. REV. 615. The case also decides that it is impossible for the firm to be insolvent so long as any of its members remain able to pay its debts, a necessary result of the aggregate theory of partnership adopted by the court. *Vaccaro* v. *Security Bank*, 103 Fed. 436 (C. C. A. 6th Cir.); *In re Blair*, 99 Fed. 76. Those who desired to see a recognition of the entity theory in the act would of course have reached a contrary result. *In re Bertenshaw*, 157 Fed. 363 (C. C. A. 6th Cir.). See COLLIER, BANKRUPTCY, 4 ed., 119; 18 HARV. L. REV. 495, 498. A recent decision in the Federal District Court for Southern New York decided after the principal case but not citing it, reaches the same result, because the court felt bound by authority, arguing nevertheless for the adoption of the entity theory. *In re Samuels Lesser. Ex parte Quinn*, 30 Am. B. R. 293 (D. C. for So. N. Y.).

BANKS AND BANKING — DEPOSITS: LIABILITY TO DEPOSITOR — DEPOSIT TO PERSONAL ACCOUNT OF CHECK PAYABLE TO TRUSTEE. — The defendant bank allowed a guardian to deposit to his personal account a check which, to the knowledge of the bank, represented guardianship funds. The guardian later checked out his entire deposit and absconded. *Held*, that the bank is liable to the surety on the guardian's bond. *United States Fidelity & Guaranty Co.* v. *People's Bank*, 157 S. W. 414 (Tenn.).

Ordinarily a trustee who deposits trust funds to his personal account commits a breach of trust. *McAllister* v. *Commonwealth*, 30 Pa. 536; *Booth* v. *Wilkinson*, 78 Wis. 652, 47 N. W. 1128. *Contra, Goodwin* v. *American National Bank*, 48 Conn. 550. Such a form of deposit in many cases may cause the *cestui* great difficulty in establishing his right to this specific fund. The deceiving appearance may induce creditors of the trustee to attach it, or, in case of the trustee's death, may induce his executor to claim it, thus greatly embarrassing the administration of the trust. *Wagner* v. *Coen*, 41 W. Va. 351, 23 S. E. 735; *School District* v. *First National Bank*, 102 Mass. 174. Although a bank must honor checks drawn on it by depositing trustees without inquiry as to the intended use of the money, and is therefore not liable for subsequent misappropriation by the trustee, yet, if it knowingly assists a trustee in a breach of trust by allowing a misuse of banking facilities it is liable to the *cestui* for loss caused thereby. This assistance may be by transferring funds from the separate trust account to the personal account of the trustee, or by setting off a deposit of trust funds against a debt due the bank from the trustee. Or it may consist in accepting a deposit of trust funds to the trustee's personal account. *Allen* v. *Puritan Trust Co.*, 211 Mass. 409, 97 N. E. 916; *Bank of Hickory* v. *McPherson*, 59 So. 934 (Miss.); *Boone County Bank* v. *Byrum*, 68 Ark. 71, 56 S. W. 532. An apparent conflict between the cases as to the bank's liability in the last instance may perhaps be explained by a consideration of the nature of the trust involved. In the case of an official trustee, as sheriff, commissioner, administrator, or guardian, the cases uniformly hold that mere notice to the bank that the fund deposited is held in trust will render it liable if harm results from an improper form of deposit. This is doubtless due to the fact that an official trustee never has a right to deposit the funds to his private account. But where the bank merely knows that the deposit consists of private trust funds, it cannot be held liable for permitting such a deposit, as by the terms of the trust the trustee may have the right to use that form of deposit. *Batchel-*